IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6483 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NANKUVERBA WD/O. PATHUBHA SAVUBHA GOHIL,AGE ADULT. - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR BP MUNSHI for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6,1.2.7
MR UR BHATT, ASST GOVERNMENT PLEADER for Respondent(s) : 1, 4,
NOTICE SERVED for Respondent(s) : 2, 5,
LAW OFFICER BRANCH for Respondent(s) : 3,
MR JB PARDIWALA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 01/08/2007

ORAL JUDGMENT

1. Rule. Mr U.R Bhatt, learned AGP waives service

of Rule on behalf of respondent State. Heard learned counsel for the parties.

2. The petitioner, now deceased, being represented through his legal heirs approached this court under Article 226 of the Constitution of India for a writ of mandamus and/or appropriate writ to the respondents for according him the benefit of higher pay scale pursuant to the scheme promulgated vide Government Resolution dated 16.08.94 on the ground that the petitioner was entitled to receive the higher pay scale on account of his completing service of 27 years as a bailiff. He has been granted the benefit of higher pay scale on the basis of his completion of 9 and 18 years of service. However, the third stage which is available on completion of 27 years of service has been denied to him.

3. The facts in brief deserve to be stated as under:

3.1 The petitioner was originally appointed and posted as Process Server in the Court of learned Chief Judicial (Junior Division and First Class), Morbi vide Office Order no. 607/51 dated 02.03.51 issued by the District and Sessions Judge, Jhalavad division. The order is produced on record at Annexure 'A'. The petitioner alongwith other process servers in the Surendranagar district came to be confirmed in the grade of 30-1/2-35 from the date of their appointment in the said grade vide order no.

DSJ/570/56 dated 6-12/3/56 passed by the Distirct and Sessions Judge Jhalavad division. The said order is also produced at Annexure 'C' to the petition. The petitioner joined services as a process server in the erstwhile State of Saurashtra and after reorganisation of states had been serving in the above district included within the territory of former State of Bombay and after bifurcation of former State of Bombay was serving as a bailiff in Surendranagar district in the State of Gujarat since the year 1960.

3.2 It is the say of the petitioner that he was drawing the salary in the scale of Rs. 40-60 as confirmed employee as it could be established vide order dated 20.06.63 issued by the then District Judge, Surendranagar. The order came to be issued in respect of four persons named therein being Office Order No. 119 wherein the language indicated that some persons were promoted and some were transferred. The scale is indicated at column 3 being Rs. 40-60. Mr Munshi, learned advocate appearing for the petitioner has stated at the bar that even in the month of May, 1960 the petitioner drew his salary in the scale of Rs. 40-60 only. Thus, it is submitted that under the order dated 10.06.60 the petitioner was not in fact promoted but was transferred only. This statement of the petitioner has not been controverted by the respondents. The petitioner has retired from his service on attaining the age of superannuation on 31.05.89. After filing this

petition, the petitioner unfortunately passed away on 08.02.03 and therefore his heirs have brought themselves on record.

4. Mr B.P Munshi, learned advocate appearing for the petitioner has submitted that the petitioner was entitled to receive the appropriate pay scale as ordered by the District Judge vide order dated 10.02.94. Accordingly, the third scale which was admissible to him has not been given to the petitioner. The concerned district Judge had passed the order on 10.02.94 but till date the admissible pay scale is not granted and therefore the heirs are deprived of the monetary benefit which would have accrued to the family on the basis of the pay scale which was admissible to the employee who had put in 27 years of service as provided by the order dated 10.02.94 passed by the concerned District Judge.

4.1 The petitioner received a letter from the District Judge, Surendranagar on 19.09.95 informing him that as per the opinion of the Local Fund Audit Office he was entitled to receive only the pay scale on the basis of the first and second pay scale but the third pay scale on completion of 27 years of service was not admissible to him and therefore no further correspondence would be entertained in this behalf. Mr Munshi has submitted that in view of the above the petition deserves to be allowed.

5. Mr Pardiwala, learned advocate appearing for the

respondent no.3 has submitted that the petitioner was eligible and entitled to receive the benefit of third pay scale on completion of 27 years of service and accordingly the monetary benefits including resultant revision of pension and family pension ought to have been granted to the petitioner. Mr Pardiwala has placed on record the documents indicating the pay scale in the case of bailiff. The same is ordered to be taken on record.

6. Mr U.R Bhatt, learned AGP appearing for the respondent-State has vehemently submitted that the petitioner was not entitled and eligible to receive this scale as it is reflected in the affidavit in reply. Shri Bhatt could not justify the stand of the respondent-Government on the Local Fund Office as the record indicated that the petitioner continued as bailiff with the same pay scale for years and therefore he was entitled to the third pay scale on completion of 27 years and on that basis the revision was required to be effected in his pay scale.

7. The record indicated that the petitioner had been serving in the scale as a bailiff for years and he had completed 27 years of service as such and therefore the denial of third pay scale on completion of 27 years of service as per the scheme dated 16.08.94 was not in conformity with the scheme and therefore the denial deserves to be quashed and set aside.

8. The necessary declaration is required to be made that the petitioner was entitled to receive the benefit of third pay scale on completion of service of 27 years n the scale of bailiff without promotion. In the result, the petition is required to be allowed with the following direction in the interest of justice:

(i)The concerned respondents are hereby directed to assess the case of the petitioner on the basis of his completion of 27 years of service as bailiff.

(ii)If the bailiff is otherwise eligible for further promotion as per the scheme dated 16.08.94 the respondent shall grant the same and work out the monetary benefit admissible to the petitioner's widow or eligible legal heir as if the petitioner had been given the pay scale admissible to him after completion of 27 years in the post of bailiff as per the scheme dated 16.08.94 and pay the differential amount to the widow and/or the eligible legal heir.

(iii)The said exercise is required to be carried out for revising the pensionary benefit and the difference in pension amount also be paid to the widow and/or the entitled legal heir.

(iv)The said exercise will also have to be carried out so far as the family pension is concerned.

(v)The entire exercise shall be completed within a period of three months from the date of receipt of the writ of this Court.

(vi)It is made clear that the entire amount of arrears that is payable on the basis of his entitlement to receive higher pay scale on the basis of 27 years of service on the same post shall be handed over to the widow of the deceased and in case the widow is not surviving then the entitled legal heir shall receive the said amount.

9. With the following direction, this petition is allowed. Rule is made absolute to the aforesaid extent.

(S.R.BRAHMBHATT, J.)

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